



## NOTICE OF DECISION

### CITY OF ST. CATHARINES

#### DECISION of the NIAGARA COMPLIANCE AUDIT COMMITTEE established pursuant to Section 88.37 of the *Municipal Elections Act, 1996*

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**IN THE MATTER OF** an Auditor's Report, dated February 26, 2024, prepared by MNP LLP, pursuant to subsection 88.33(12) of the *Municipal Elections Act, 1996*, regarding the election campaign finances of Candidate Jason Benoit (the "**Auditor's Report**").

**AND IN THE MATTER OF** a meeting of the Niagara Compliance Audit Committee (the "**Committee**") held Tuesday, March 19, 2024 (the "**Meeting**").

#### **PURPOSE**

The purpose of the Meeting was to consider the findings outlined in the Auditor's Report. The Auditor's Report was undertaken in connection with the Committee's decision, dated July 10, 2023, to grant an application for a compliance audit requested by Ann-Marie Zammit (the "**Applicant**") in respect of the election campaign finances of Jason Benoit (the "**Candidate**").

The Auditor's Report concludes that the Candidate appears to have contravened the campaign finances rules set out in the *Municipal Elections Act, 1996*. As such, in accordance with subsection 88.33(17) of the *Municipal Elections Act, 1996*, the Committee must decide whether to commence legal proceedings against the Candidate for the apparent contraventions.

#### **DECISION**

On reviewing the Auditor's Report and hearing the presentation of Josh Epstein, MNP LLP, and on hearing the oral submissions from the Applicant and the Candidate, and on considering the provisions of the *Municipal Elections Act, 1996*, it is the decision of the Committee to commence a legal proceeding against the Candidate for the apparent contraventions identified in the Auditor's Report pursuant to subsection 88.33(17) of the *Municipal Elections Act, 1996*.

#### **REASONS**

The reasons for the decision are as follows:

1. This matter came before the Committee as follows:
  - a. The Candidate ran for the office of City Council for the City St. Catharines in the 2022 Municipal Election. He was not elected to the office and the Candidate filed his Form 4 Financial Statement on March 27, 2023.
  - b. The Committee received and considered an application for a compliance audit at its meeting held on July 10, 2023. The Committee decided to grant the application and order a compliance audit, for reasons issued following the July 10, 2023 decision.
  - b. Pursuant to the Committee's decision, MNP LLP was appointed to conduct the compliance audit.
  - c. The Auditor's Report, provided to the Committee on March 19, 2024, identified apparent contraventions of the election campaign finance rules.
2. Subsection 88.33(17) of the *Municipal Elections Act, 1996* provides that where an auditor's report identifies apparent contraventions, the Committee must determine whether to commence legal proceedings against the Candidate.
3. At this juncture, the Committee is performing a gate-keeping function. The Committee is not making a determination on whether the Candidate has violated the campaign finance rules, nor does it have the authority to impose any penalties if the Candidate is found guilty, rather, the role of the Committee at this time is to determine whether it is in the public interest to commence a legal proceeding against the Candidate for the apparent contraventions.
4. The Committee is of the view that the following factors are relevant to its determination of whether to commence a legal proceeding against the Candidate:
  - a. The evidence available to support a prosecution.
  - b. The severity of the apparent contravention.
  - c. Whether the apparent contravention is minor or trivial.
  - d. Whether the apparent contravention was committed deliberately or knowingly, or whether the apparent contravention was committed inadvertently.
  - e. Any potential explanations or defenses the Candidate has raised in respect of the apparent contravention.
  - f. Whether prosecution is required to censure the Candidate or to provide a deterrent to other candidates in the future.

5. The Auditor's Report identified apparent contraventions in the nature of failing to accurately report campaign expenses and campaign contributions, contrary to clauses 88.19(1), 88.22(1)(e), 88.22(1)(g)(ii-iii) and 92(1)(b) of the *Municipal Elections Act, 1996*.
6. The Auditor's Report confirms that the Candidate incurred campaign expenses, and a related contribution from himself, in developing a website and related expenses in the campaign effort without recording on his Form 4 Financial Statement.
7. The Auditor's Report, and the presentation of Mr. Epstein, indicate that the Candidate stated that his wife set up his campaign website for him and that to his knowledge there was no cost. The Auditor found that there were expenses in the development of the website as well as advertising expenses.

When the candidate submitted his nomination for city council, he was provided with a package that he received information regarding his responsibilities. He went on to complete the Form 4 with No Expenses or Contributions when in fact there were. In the Committee's opinion, this conduct is concerning and demonstrates a lack of willingness to acknowledge the seriousness and potential consequences of his apparent contraventions of the campaign finance reporting requirements. When a person chooses to become a candidate in an election, they subject themselves to the campaign finance regime, which requires their diligence and cooperation with the *Municipal Elections Act* requirements.

8. The Committee heard from the Candidate regarding the violations, however, he did not provide any potential explanations or defenses in respect of the apparent contraventions. He did mention that his wife had had a medical problem at the time of the filing which impacted the family and which the committee took into consideration.
9. The contraventions were identified in the Auditor's Report and the committee had discussions that eventually resulted in the Committee to say that it is of the opinion that it is in the public interest to commence a prosecution in an effort to ensure that the Candidate and future candidates understand completely what their obligations are and comply with them in a responsible and accountable manner.
10. Therefore, the Committee hereby decides to commence legal proceedings against the Candidate, pursuant to subsection 88.33(17) of the *Municipal Elections Act, 1996*.

**Dated** this 26th day of March 2024 and approved by the following Members of the Niagara Compliance Audit Committee:

**Margo Pinder**

Niagara Compliance Audit Committee Member

**Murray Christie**

Niagara Compliance Audit Committee Member, Chair

**Larry Peebles**

Niagara Compliance Audit Committee Member

**With the following Members of the Committee Dissenting:**

**Heather Salter**

Niagara Compliance Audit Committee Member

**Dinesh Parakh**

Niagara Compliance Audit Committee Member